D. HAYGood
PLAINTIFF/PETITIONER/MOVANT'S NAME

V09189
PRISON NUMBER

C.S.P Sac IV
PLACE OF CONFINEMENT

P.O.BoX 290066 Represa, ca 95671
ADDRESS

FILED
APR - 1 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY KM DEPUTY

United States District Court
Southern District Of California

D. HAYGood,
Plaintiff/Petitioner/Movant

v.

James Walker,
Defendant/Respondent

Civil No. 08CV0374 JAH(BLM)
(TO BE FILLED IN BY U.S. DISTRICT COURT CLERK)

MOTION AND DECLARATION UNDER PENALTY OF PERJURY IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, ______________________________,
declare that I am the Plaintiff/Petitioner/Movant in this case. In support of my request to proceed without prepayment of fees or security under 28 U.S.C. § 1915, I further declare I am unable to pay the fees of this proceeding or give security because of my poverty, and that I believe I am entitled to redress.

In further support of this application, I answer the following question under penalty of perjury:

1. Are you currently incarcerated? ☒ Yes ☐ No (If "No" go to question 2)
   If "Yes," state the place of your incarceration C.S.P SAC IV P.O.BoX 290066, Represa, ca 95671
   Are you employed at the institution? ☐ Yes ☒ No
   Do you receive any payment from the institution? ☐ Yes ☒ No
   [Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of the trust account statement from the institution of your incarceration showing at least the last six months transactions.]

2. Are you currently employed? ☐ Yes ☒ No
   a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.____________________

   b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.____________________

3. In the past twelve months have you received any money from any of the following sources?:

a.	Business, profession or other self-employment	☐ Yes	☐ No
b.	Rent payments, royalties interest or dividends	☐ Yes	☐ No
c.	Pensions, annuities or life insurance	☐ Yes	☐ No
d.	Disability or workers compensation	☐ Yes	☐ No
e.	Social Security, disability or other welfare	☐ Yes	☐ No
e.	Gifts or inheritances	☐ Yes	☐ No
f.	Spousal or child support	☐ Yes	☐ No
g.	Any other sources	☐ Yes	☐ No

If the answer to any of the above is "Yes" describe each source and state the amount received and what you expect you will continue to receive each month.____________________

4. Do you have any checking account(s)? ☐ Yes ☒ No
   a. Name(s) and address(es) of bank(s):____________________
   b. Present balance in account(s):____________________

5. Do you have any savings/IRA/money market/CDS' separate from checking accounts? ☐ Yes ☒ No
   a. Name(s) and address(es) of bank(s):____________________
   b. Present balance in account(s):____________________

6. Do you own an automobile or other motor vehicle? ☐ Yes ☒ No
   a. Make:__________ Year:__________ Model:__________
   b. Is it financed? ☐ Yes ☐ No
   c. If so, what is the amount owed?____________________

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or other valuable property?
   ☐ Yes ☒ No
   If "Yes" describe the property and state its value.

8. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support. None

9. List any other debts (current obligations, indicating amounts owed and to whom they are payable): None

10. List any other assets or items of value (specify real estate, gifts, trusts inheritances, government bonds, stocks, savings certificates, notes, jewelry, artwork, or any other assets [include any items of value held in someone else's name]): None

12. If you answered all of the items in #3 "No," and have not indicated any other assets or sources of income anywhere on this form, you must explain the sources of funds for your day-to-day expenses. My Family mainly my uncle send's me money off and ON.

I declare under penalty of perjury that the above information is true and correct and understand that a false statement herein may result in the dismissal of my claims.

March 12, 2008
DATE

O. Hg[illegible]
SIGNATURE OF APPLICANT

If you are a **prisoner** you must have an officer from your institution provide this official certificate as to the amount of money in your prison account. There are no exceptions to this requirement.

PRISON CERTIFICATE
(Incarcerated applicants only)
(To be completed by the institution of incarceration)

I certify that the applicant D. HAYGOOD,
(NAME OF INMATE)

V09189,
(INMATE'S CDC NUMBER)

has the sum of $ 1.16 on account to his/her credit at

CSP-SACRAMENTO.
(NAME OF INSTITUTION)

I further certify that the applicant has the following securities n/A

to his/her credit according to the records of the aforementioned institution. I further certify that **during the past six months** the applicant's ***average monthly balance*** was $ 27.29,

and the ***average monthly deposits*** to the applicant's account was $ 19.50.

ALL PRISONERS ***MUST*** ATTACH A CERTIFIED COPY OF THEIR TRUST ACCOUNT STATEMENT SHOWING TRANSACTIONS FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT PER 28 U.S.C. § 1915(a)(2).

3/18/08
DATE

[signature]
SIGNATURE OF AUTHORIZED OFFICER OF INSTITUTION

KIM A. WIPF
OFFICER'S FULL NAME (PRINTED)

THE WITHIN INSTRUMENT IS A CORRECT COPY OF THE TRUST ACCOUNT MAINTAINED BY THIS OFFICE.
ATTEST:
CALIFORNIA DEPARTMENT OF CORRECTIONS
BY [signature]
TRUST OFFICE

Acct Clk II
OFFICER'S TITLE/RANK

TRUST ACCOUNT WITHDRAWAL AUTHORIZATION
(Incarcerated applicants only)

(This form **MUST** be completed by the prisoner requesting to proceed in forma pauperis. An incomplete "Trust Account Withdrawal Authorization Form," or "Prison Certificate" will result in automatic denial of the prisoner's request to proceed in forma pauperis.)

I, D. HAYGOOD V09189, request and authorize the agency holding me in
(Name of Prisoner/ CDC No.)
custody to prepare for the Clerk of the United States District Court for the Southern District of California, a certified copy of the statement for the past six months of my trust fund account (or institutional equivalent) activity at the institution where I am incarcerated.

I further request and authorize the agency holding me in custody to calculate and disburse funds from my trust fund account (or institutional equivalent) pursuant to any future orders issued by the Court relating to this civil action pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Title VIII, §§ 801-10, 110 Stat. 1321 (1996).

This authorization is furnished in connection with a civil action filed in the Southern District of California, and I understand that, pursuant to 28 U.S.C. §§ 1914 and 1915(b)(1), the total amount of filing fees for which I am obligated is either ☐ $250 (civil complaint) or ☑ $5 (habeas corpus petition) (check one). I also understand that this fee will be debited from my account regardless of the outcome of this action. This authorization shall apply to any other agency into whose custody I may be transferred.

March 12, 2008
DATE

D. Haygood
SIGNATURE OF PRISONER

REPORT ID: TS3030 .701 REPORT DATE: 03/18/08
PAGE NO: 1

CALIFORNIA DEPARTMENT OF CORRECTIONS
CALIF STATE PRISON SACRAMENTO
INMATE TRUST ACCOUNTING SYSTEM
INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: AUG. 01, 2007 THRU MAR. 18, 2008

ACCOUNT NUMBER : V09189 BED/CELL NUMBER: FB2 1 00000028L
ACCOUNT NAME : HAYGOOD, DARROW DEWANN ACCOUNT TYPE: I
PRIVILEGE GROUP: A

TRUST ACCOUNT ACTIVITY

DATE	TRAN CODE	DESCRIPTION	COMMENT	CHECK NUM	DEPOSITS	WITHDRAWALS	BALANCE
08/01/2007		BEGINNING BALANCE					0.00
08/03	*VD54	INMATE PAYROL	700303/JUL		9.00		9.00
08/17	W502	POSTAGE CHARG	700477 LEG			4.60	4.40
08/21	FR01	CANTEEN RETUR	700493			34.69-	39.09
08/21	FC02	DRAW-FAC 2	BFAC700504			39.09	0.00
09/06	*VD54	INMATE PAYROL	700638/AUG		9.00		9.00
09/07	*DD30	CASH DEPOSIT	MR4948/ROC		45.00		54.00
09/14	W502	POSTAGE CHARG	700739 LEG			4.60	49.40
09/24	FR01	CANTEEN RETUR	700829			4.79-	54.19
09/25	FC02	DRAW-FAC 2	BFAC700846			54.19	0.00
10/04	*VD54	INMATE PAYROL	700950SEPT		9.00		9.00
10/05	W516	LEGAL COPY CH	700961 SUP			0.30	8.70
10/17	W516	LEGAL COPY CH	701084COPY			8.70	0.00
10/23	FR01	CANTEEN RETUR	701124			6.59-	6.59
10/23	FC02	DRAW-FAC 2	701131BFAC			6.59	0.00
11/13	FR01	CANTEEN RETUR	701363			6.59-	6.59
12/18	*DD30	CASH DEPOSIT	MR4916-ROC		45.00		51.59
12/18	FC02	DRAW-FAC 2	BFAC701751			51.59	0.00
ACTIVITY FOR 2008							
01/15	FR01	CANTEEN RETUR	701975			3.44-	3.44

CURRENT HOLDS IN EFFECT

DATE PLACED	HOLD CODE	DESCRIPTION	COMMENT	HOLD AMOUNT
02/26/2008	H109	LEGAL POSTAGE HOLD	702453 LEG	4.60

* RESTITUTION ACCOUNT ACTIVITY

DATE SENTENCED: 10/08/03 CASE NUMBER: SCE229595
COUNTY CODE: SD FINE AMOUNT: $ 10,000.00

DATE	TRANS.	DESCRIPTION	TRANS. AMT.	BALANCE
08/01/2007		BEGINNING BALANCE		9,271.50

REPORT ID: TS3030 .701 REPORT DATE: 03/18/08
PAGE NO: 2

CALIF STATE PRISON SACRAMENTO
INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: AUG. 01, 2007 THRU MAR. 18, 2008

ACCT: V09189 ACCT NAME: HAYGOOD, DARROW DEWANN ACCT TYPE: I

* RESTITUTION ACCOUNT ACTIVITY

DATE SENTENCED: 10/08/03 CASE NUMBER: SCE229595
COUNTY CODE: SD FINE AMOUNT: $ 10,000.00

DATE	TRANS.	DESCRIPTION	TRANS. AMT.	BALANCE
08/03/07	VR54	RESTITUTION DEDUCTION-SUPPORT	10.00-	9,261.50
09/06/07	VR54	RESTITUTION DEDUCTION-SUPPORT	10.00-	9,251.50
09/07/07	DR30	REST DED-CASH DEPOSIT	50.00-	9,201.50
10/04/07	VR54	RESTITUTION DEDUCTION-SUPPORT	10.00-	9,191.50
12/18/07	DR30	REST DED-CASH DEPOSIT	50.00-	9,141.50

* THIS STATEMENT DOES NOT REFLECT THE ADMINISTRATIVE FEE CHARGE THAT *
* IS EQUAL TO TEN PERCENT OF THE RESTITUTION AMOUNT COLLECTED. *

TRUST ACCOUNT SUMMARY

BEGINNING BALANCE	TOTAL DEPOSITS	TOTAL WITHDRAWALS	CURRENT BALANCE	HOLDS BALANCE	TRANSACTIONS TO BE POSTED
0.00	117.00	113.56	3.44	4.60	0.00

CURRENT AVAILABLE BALANCE
1.16-

THE WITHIN INSTRUMENT IS A CORRECT COPY OF THE TRUST ACCOUNT MAINTAINED BY THIS OFFICE.
ATTEST:
CALIFORNIA DEPARTMENT OF CORRECTIONS
BY [signature]
TRUST OFFICE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARROW HAYGOOD, Petitioner, v. MIKE KNOWLES, Warden Respondent.	Civil No. 08-0374 JAH (BLM) **ORDER DISMISSING CASE WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

FAILURE TO SATISFY FILING FEE REQUIREMENT

Petitioner has failed to pay the $5.00 filing fee and has failed to move to proceed in forma pauperis. Because this Court cannot proceed until Petitioner has either paid the $5.00 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254.

FAILURE TO NAME PROPER RESPONDENT

Review of the Petition reveals that Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name the state officer having custody of him as the respondent. Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to name a proper respondent. See id.

The warden is the typical respondent. However, "the rules following section 2254 do not specify the warden." Id. "[T]he 'state officer having custody' may be 'either the warden of the institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal institutions.'" Id. (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee's note). If "a petitioner is in custody due to the state action he is challenging, '[t]he named respondent shall be the state officer who has official custody of the petitioner (for example, the warden of the prison).'" Id. (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee's note).

A long standing rule in the Ninth Circuit holds "that a petitioner may not seek [a writ of] habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The actual person who is [the] custodian [of the petitioner] must be the respondent." Ashley v. Washington, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of habeas corpus acts upon the custodian of the state prisoner, the person who will produce "the body" if directed to do so by the Court. "Both the warden of a California prison and the Director of Corrections for California have the power to produce the prisoner." Ortiz-Sandoval, 81 F.3d at 895.

Here, Petitioner has incorrectly named "Mike Knowles," as Respondent. Additionally, Gerry Brown, the Attorney General of the State of California, is not a proper respondent in this action. Rule 2 of the Rules following § 2254 provides that the state officer having custody of the petitioner shall be named as respondent. Rule 2(a), 28 U.S.C. foll. § 2254. However, "if the applicant is not presently in custody pursuant to a state judgement against which he seeks relief but may be subject to such custody in the future," then "the officer having present custody of the applicant as well as the attorney general of the state in which the judgment which he seeks to attack was entered shall each be named as respondents." Rule 2 (b), 28 U.S.C. foll. § 2254. Here, there is no basis for Petitioner to have named the Attorney General as a respondent in this action.

In order for this Court to entertain the Petition filed in this action, Petitioner must name the warden in charge of the state correctional facility in which Petitioner is presently confined or the Director of the California Department of Corrections. Brittingham v. United States, 982

F.2d 378, 379 (9th Cir. 1992) (per curiam).

FAILURE TO USE PROPER FORM

Additionally, a Petition for Writ of Habeas Corpus must be submitted in accordance with the Local Rules of the United States District Court for the Southern District of California. See Rule 2(c), 28 U.S.C. foll. § 2254. In order to comply with the Local Rules, the petition must be submitted upon a court-approved form and in accordance with the instructions approved by the Court. Presently, Petitioner has submitted an application for writ of habeas corpus on a non-approved form. The correct forms are available free of charge from the clerk of the court and available upon request.

CONCLUSION AND ORDER

In light of the above, the Court **DISMISSES** the Petition without prejudice due to Petitioner's failure to (1) pay the $5 filing fee or move to proceed in forma pauperis, (2) name a proper respondent, and (3) submit an application for writ of habeas corpus on a court-approved form.

If Petitioner wishes to proceed with this case, Petitioner must file a First Amended Petition, along with a copy of this Order AND the $5.00 filing fee or adequate proof of his inability to pay the fee, no later than April 29, 2008.

The Clerk of Court is directed to send a blank Southern District of California First Amended Petition form, and an In Forma Pauperis Application to Petitioner along with a copy of this Order.

IT IS SO ORDERED.

DATED: March 5, 2008

JOHN A. HOUSTON
United States District Judge